

In the Matter of

MB Docket No. 16-357
Facility ID No. 65483
File Nos. BRH-20050728AUU and
BRH-20130730ANM

Attn: Chief Administrative Law Judge Richard L. Sippel

1. On January 9, 2017, Media Action Center (MAC) and Sue Wilson (collectively, Petitioners) filed a petition to enlarge the issues in the above-captioned proceeding (Petition).¹ Specifically, Petitioners seek to add to an already complex case the additional issues of (i) whether Entercom License, LLC (Entercom) (formerly known as Entercom Sacramento License, LLC) failed to properly train and supervise its staff with respect to Commission compliance matters at five other stations in Sacramento; (ii) whether Entercom operated these five other stations in the public interest during their individual license terms; (iii) whether Entercom's pending applications for renewal for these five other stations should be granted; (iv) whether Entercom possesses the character to hold Commission licenses for Station KDND(FM) and these five other stations; and (v) whether Entercom violated Section 73.3588 of the Commission's rules by failing to report the existence and/or the terms of a settlement agreement entered into with the family of Jennifer Strange. For the reasons set forth below, the Chief, Enforcement

¹ See Petition to Enlarge Issues by Media Action Center and Sue Wilson, filed Jan. 9, 2017 (Petition).

Bureau, through his attorneys, opposes the Petition.²

The Media Bureau's Grant of Pending Applications In Part Moots the Petition

2. Petitioners seek to add several issues concerning the operations of five additional Sacramento stations licensed by Entercom – Stations KUDL(FM), KIFM(AM), KKDO(FM), KRXQ(FM), and KSEG(FM) (collectively, Other Sacramento Stations).³ At the time the Petition was filed, Entercom's applications for renewal of the Other Sacramento Stations were pending before the Media Bureau.

3. Pursuant to Section 309(k) of the Communications Act of 1934, as amended (the Act), the Commission "shall grant [an application for renewal of a broadcast station license] if it finds, with respect to that station, during the preceding term of its license—(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensees of [the] Act or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee of [the] Act or the rules and regulations of the Commission, which, taken together, would constitute a pattern of abuse."⁴ On January 18, 2017, after consideration of the record before it, the Commission's Media Bureau granted the pending applications for renewal of the Other Sacramento Stations.⁵

4. To the extent, therefore, that Petitioners seeks to add issues to this case directed to whether the pending applications for renewal of these Other Sacramento Stations should be granted, those issues are now moot. Thus, the Presiding Judge should deny Petitioners' motion

² See 47 C.F.R. § 1.294(c) (providing that oppositions to petitions to modify issues upon which the hearing was ordered shall be filed within 10 days after the pleading is filed).

³ See Petition at 14-15, ¶¶ (j)-(m).

⁴ 47 U.S.C. § 309(k).

⁵ See Correspondence dated Jan. 18, 2007 to counsel for Entercom Sacramento License, LLC from Peter H. Doyle, Chief, Audio Division, Media Bureau, related to Stations KUDL(FM), KRXQ(FM), KSEG(FM), KKDO(FM), and KIFM (AM).

as to requested issues (j)-(m).

**There Is No Basis Presented For Adding Issues Concerning
Entercom's Operations at Other Sacramento FM Stations**

5. In pertinent part, the issues designated for hearing in this case are directed to whether Entercom (i) designed and conducted a contest broadcast on Station KDND(FM) that it knew was potentially dangerous; (ii) increased the danger to the contestants by changing the contest terms; (iii) failed to protect the contestants from, or warn the contestants of, the contest's potential dangers; (iv) prioritized the entertainment value of the contest over the welfare of the contestants; and (v) failed to properly train and supervise the Station KDND(FM) staff and the contest to ensure the safety of the contestants.⁶ Petitioners fail to set forth any nexus between the operations at the Other Sacramento Stations and the manner in which Station KDND(FM) designed and conducted the "Hold Your Wee for a Wii" contest.

6. Although Petitioners suggest that there is an "overlap in facts and circumstances" between the allegations set forth in the HDO concerning Station KDND(FM) – and the "Hold Your Wee for a Wii" contest – and the operations of the Other Sacramento Stations,⁷ they provide no evidence of any such "overlap." They rely on the declaration from Petitioner Sue Wilson, for example, which demonstrates nothing more than that Station KDND(FM) and the Other Sacramento Stations are located in the same office building and that the public inspection files for Station KDND(FM) and the Other Sacramento Stations can be found on the same computer.⁸ Petitioners also rely on John Geary's declaration, which demonstrates only that Station KDND(FM) and the Other Sacramento Stations had two common employees – himself

⁶ See Hearing Designation Order and Notice of Opportunity for Hearing, rel. Oct. 27, 2016 (HDO).

⁷ See, e.g., Petition at 9.

⁸ See Declaration of Sue Wilson, dated Jan. 8, 2017, submitted as Attachment A to the Petition, at 1-2.

and Robin Pechota, the Promotions Director at Station KDND(FM).⁹ Neither declaration offers any evidence of a connection between the allegations set forth in the HDO and the Other Sacramento Stations. Thus, neither declaration provides any support for broadly expanding the scope of an already complicated case to include the operations of five unrelated stations.

7. In addition, Petitioners appear to suggest that because the HDO questions whether Entercom failed to train and/or supervise Station KDND(FM) employees in conducting the “Hold Your Wee for a Wii” contest, it is necessary to investigate whether Entercom also failed to train its employees at the Other Sacramento Stations on its obligations to comply with Commission rules and policies.¹⁰ Petitioners appear to assume that simply because Station KDND(FM) and the Other Sacramento Stations shared a common licensee, the alleged failures at Station KDND(FM) existed as well at the other Entercom stations. A motion to add issues, however, must be based on more than mere assumptions.

8. Pursuant to Section 1.229(d) of the Commission’s rules, in order to add issues to this case, Petitioners are required to articulate specific allegations of fact “supported by affidavits of a person or persons having personal knowledge thereof” that justify adding the newly requested issues.¹¹ Here, Petitioners have not identified any examples of how any of the Other Sacramento Stations failed to maintain oversight and control over their operations, let alone offered any supporting evidence of any such transgressions. On this basis alone, their motion to add issues concerning Entercom’s operations at the Other Sacramento Stations should be denied.

9. Lastly, Petitioners suggest that it is proper to add issues concerning the Other Sacramento Stations to this case because the verdict entered in the California wrongful death

⁹ See Declaration of John Geary, dated March 6, 2008, submitted as Attachment C to the Petition, at 3-4.

¹⁰ See, e.g., Petition at 3-6.

¹¹ 47 C.F.R. § 1.229(d).

action (arising from the death of Jennifer Strange as a result of the “Hold Your Wee for a Wii” contest) found Station KDND(FM) and the Other Sacramento Stations “collectively negligent” for Ms. Strange’s death.¹² Petitioners argue that because all of the stations were found “collectively culpable,” the Other Sacramento Stations are implicated in the issues articulated in the HDO against Station KDND(FM) and should be added to the case.¹³ Petitioners’ argument, however, is based on a mischaracterization of the verdict in the wrongful death action.

10. While it is true that Entercom – as the licensee of Station KDND(FM) – was found negligent in the death of Ms. Strange, there is nothing in the verdict form or in the trial record which demonstrates that, *collectively*, Station KDND(FM) and the Other Sacramento Stations were negligent in Ms. Strange’s death.¹⁴ Rather, the wrongful death case focused on the training of *Station KDND(FM)*’s employees, and their design and conduct of the “Hold Your Wee for a Wii” contest – not on the training or operations at the Other Sacramento Stations. Despite Petitioners’ assertions to the contrary, there is no basis therefore to apply the same “facts and circumstances” alleged in connection with Station KDND(FM) in the HDO to the Other Sacramento Stations. For this reason, as well, Petitioners’ motion to add issues concerning Entercom’s operations at the Other Sacramento Stations should be denied.

**There Is No Basis Presented For Adding An Issue Concerning
Entercom’s Character To Hold Commission Licenses**

11. As in their Petition to Deny the renewal application for Station KDND(FM), Petitioners again argue an issue should be added to determine whether Entercom lacks the basic character qualifications to remain a Commission licensee.¹⁵ As Petitioners recognize, however,

¹² See, e.g., Petition at 6, 8-9.

¹³ See *id.*

¹⁴ See, e.g., Special Verdict Form, submitted as Attachment D to the Petition.

¹⁵ See Petition at 10-13.

in what is effectively a veiled petition for reconsideration, the Commission has already considered – and rejected – their arguments to add this issue to the HDO.¹⁶

12. Pursuant to Section 1.106(f) of the Commission’s rules, petitions for reconsideration of a Commission order designating a matter for hearing must be filed within 30 days from the date of the public release of that order.¹⁷ The HDO was publicly released on October 27, 2016. Any petitions for reconsideration were required to have been filed no later than November 28, 2016. The instant Petition was filed on January 9, 2017. To the extent that Petitioners now seek reconsideration of the Commission’s decision in the HDO not to include a character qualification issue, it is untimely and should be denied on that ground alone.

13. In addition, Petitioners present no basis on which to add a basic character qualification issue to this case. Although Petitioners cite to the Commission’s 1986 Character Policy Statement, they offer no explanation of how the particular facts of this case trigger the character considerations set forth in that Policy. Specifically, the Commission has recognized that in considering conduct relevant to making the requisite character findings, it will “be concerned with misconduct which violates the Communications Act or a Commission rule or policy, and with certain specific non-FCC misconduct which demonstrate the proclivity of an applicant to deal truthfully with the Commission and to comply with our rules and policies.”¹⁸ Petitioners do not suggest that Entercom’s alleged misconduct as set forth in the HDO violates either the Communications Act or a Commission rule. In addition, Petitioners fail to present any argument that Entercom’s failures in the design and conduct of the “Hold Your Wee for a Wii” contest – as horrific as the outcome of that contest may have been – amount to the type of non-

¹⁶ See Petition at 10.

¹⁷ See 47 C.F.R. § 1.106(f).

¹⁸ Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1183 (Jan. 14, 1986).

FCC behavior which triggers the Character Policy. Accordingly, Petitioners' motion to add an issue concerning Entercom's character to hold Commission licenses should be denied.

**There Is No Basis Presented For Adding An Issue
Concerning A Violation of Section 73.3588**

14. Petitioners seek to add an issue to this case to determine whether Entercom violated Section 73.3588 of the Commission's rules by failing to submit to the Commission a copy of the settlement agreement it entered into with the family of Jennifer Strange resolving the California wrongful death action.¹⁹ Petitioners offer no explanation, however, for how this rule applies to the circumstances in this case.

15. Section 73.3588 of the Commission's rules, entitled "Dismissal of Petitions to Deny or Withdrawal of Informal Objections," states that "[w]henver a petition to deny or an informal objection has been filed against any application, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal, and an affidavit setting forth," among other things a certification that includes the exact nature and amount of any consideration received or promised and the terms of any agreement related to the dismissal of withdrawal of the petition to deny.²⁰

16. Petitioners present no evidence that any party filed either a petition to deny or an informal objection against Entercom's renewal application at issue in this case. Instead, Petitioners appear to rely on the *complaint* filed by Ms. Strange's family in which they requested that the Commission investigate the "Hold Your Wee for a Wii" contest and terminate the

¹⁹ See Petition at 13-14.

²⁰ 47 C.F.R. § 73.3588.

station's license.²¹ Simply put, that complaint was neither a petition to deny nor an informal objection to any specific Entercom application. Thus, the fact that Ms. Strange's family may have later withdrawn its complaint – after the resolution of its wrongful death action – does not trigger the disclosure requirements set forth in Section 73.3588 of the Commission's rules for withdrawal of petitions to deny and informal objections. Thus, there is no basis for adding an issue to determine whether Entercom violated this Section of the Commission's rules.

Conclusion

17. For the reasons set forth above, the Petition should be denied in its entirety.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



Pamela S. Kane
Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554
(202) 418-1420

Michael Engel
Special Counsel
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C366
Washington, D.C. 20554
(202) 418-7330

January 18, 2017

²¹ See Petition at 13.

CERTIFICATE OF SERVICE

Pamela S. Kane certifies that she has on this 18th day of January, 2017, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO PETITION TO ENLARGE ISSUES" via email to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

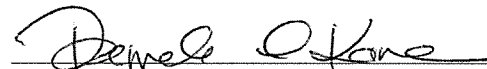
Rachel Funk
Office of the Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

Robert G. Kirk
Wilkinson Barker Knauer LLP
1800 M Street, N.W.
Suite 800N
Washington, D.C. 20036
rkirk@wbklaw.com

Jane E. Mago
Special Counsel
Entercom Communications Corp.
4154 Cortland Way
Naples, FL 34119
jane.mago@entercom.com

Steven A. Lerman
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, D.C. 20036.
slerman@lermansenter.com

Michael Couzens
Michael Couzens Law Office
6536 Telegraph Avenue
Suite B201
Oakland, CA 94609
cuz@well.com


Pamela S. Kane